

## **REMARKS**

The withdrawal of several of the previous rejections and the indication of allowable subject matter is respectfully acknowledged.

### **The Amendments**

Claim 17 is amended to address the 35 U.S.C. §112 rejection thereof.

Applicants reserve the right to file one or more continuing and/or divisional applications directed to any subject matter disclosed in the application which may have been canceled by any of the above amendments.

### **The Restriction Requirement and Withdrawn Claims**

Applicants submit that the method of making and method of use claims withdrawn pursuant to the restriction requirement (i.e., claims 7 and 13-16) should be subject to rejoinder upon allowance of the elected compound/composition claims; see, e.g., *In re Ochiai*, 37 USPQ2d 1127 (Fed. Cir. 1995); *In re Brouwer*, 37 USPQ2d 1663 (Fed. Cir. 1996); and the Commissioner's comments thereon in 1184 TMOG 86, March 26, 1996. Thus, the method claims are retained in the application.

### **The Rejection under 35 U.S.C. §112, second paragraph**

The rejection of claims 3-6 and 17 under 35 U.S.C. §112, second paragraph, is respectfully traversed.

The rejection as to claim 17 is believed to be rendered moot by the amendment thereto.

Regarding claims 3-6 and the "pyridyl N-oxide" recitation, applicants urge that claim 1 provides sufficient antecedent basis. This definition for the R2 group is contained within the term "heteroaryl" for the R2 group in claim 1. The definition of the "heteroaryl" term in the specification at page 7, lines 18-23, includes the group "pyridyl N-oxide." Applicants are entitled to be their own lexicographer and have defined the term heteroaryl as used in the claims to include this group. The definition is also not repugnant to the normal meaning of the term as it

is not uncommon to include substituted heteroaryl groups within the general term heteroaryl.

Thus, the rejection under 35 U.S.C. §112, second paragraph, should be withdrawn.

It is submitted that the claims are in condition for allowance. However, the Examiner is kindly invited to contact the undersigned to discuss any unresolved matters.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,

/John A. Sopp/

---

John A. Sopp, Reg. No. 33,103  
Attorney/Agent for Applicant(s)

MILLEN, WHITE, ZELANO  
& BRANIGAN, P.C.  
Arlington Courthouse Plaza 1, Suite 1400  
2200 Clarendon Boulevard  
Arlington, Virginia 22201  
Telephone: (703) 243-6333  
Facsimile: (703) 243-6410

Attorney Docket No.: 01-2116

Date: May 24, 2010

JAS:dap